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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1033. ~~1039~~ 369

THE UNITED STATES, APPELLANT,

vs.

MALBONE F. WATSON.

APPEAL FROM THE COURT OF CLAIMS.

FILED SEPTEMBER 27, 1886.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1033.

THE UNITED STATES, APPELLANT,

vs.

MALBONE F. WATSON.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Petition, filed February 24, 1886	1	1
Demurrer, filed July 17, 1886	4	2
Order of the court on demurrer	5	2
Findings of fact and conclusion of law	6	2
Final judgment	8	3
Application for and allowance of appeal	9	3
Certificate	10	3

1 United States Court of Claims.

MALBONE F. WATSON
vs.
THE UNITED STATES. } No. 14791.

Plaintiff's petition.—Filed February 24, 1886.

To the honorable Court of Claims:

Your petitioner is a citizen of the United States and an officer of the United States Army.

The plaintiff entered the military service of the United States as a cadet, at the United States Military Academy, on the first day of July, 1856, and was appointed a second lieutenant of cavalry on May 6, 1861; appointed a first lieutenant of artillery May 14, 1861; appointed a captain March 9, 1866, and retired from active service, for loss of his right leg from wound received in line of duty, September 18, 1868.

In computing his longevity or service pay he claims to be entitled to count his service as a cadet, under the acts of July 5, 1838 (5 Stat., 256), March 2, 1867 (§ 9, 423, 14 Stat.), and July 15, 1870 (§ 1262, R. S.).

Your petitioner is entitled, as he claims, to the difference between his basis pay (prior to five years' service) and pay after five years' service, from July 1, 1861, to May 6, 1866, four years ten months and six days, or to the sum of $561 20

2 And to the difference between pay after five years' service and pay after ten years' service, from July 1, 1866, to July 1, 1870, four years, or to the sum of..... $456 40

And to the difference between pay after five years' service and pay after ten years' service, from July 1, 1870, to May 6, 1871, ten months and six days, or the sum of..... $150 00

And to the difference between pay after ten years' service and pay after fifteen years' service, from July 1, 1871, to May 6, 1876, four years ten *ten* months and six days, or the sum of... $929 26

And to the difference between the pay after fifteen years' service and pay after twenty years' service, from July 1, 1876, to May 6, 1881, four years ten months and six days, or the sum of... $514 24

Said different sums amounting in all to the sum of twenty-six hundred and eleven dollars and ten cents ($2,611.10).

There has been no action on this claim by Congress, nor any Executive Department, except their refusal to pay upon demand.

There has been no assignment or transfer of this claim, nor any part thereof.

Your petitioner has at all times borne true allegiance to the United States, and has not at any time, nor in any way, aided, abetted, or given encouragement to rebellion against the United States.

Your petitioner demands judgment against the United States for the sum of twenty-six hundred and eleven dollars and ten cents.

R. B. WARDEN,
Attorney for Plaintiff.

3 UNITED STATES OF AMERICA,
District of Columbia, ss:

Robert B. Warden, being duly sworn, says that he is the atterney in fact, as well as at law, of the said Malbone F. Watson, and that the affiant believes the statements in the above petition are true.

R. B. WARDEN.

Sworn to before me and signed in my presence by said Robert B. Warden this twenty-fourth day of February, A. D. 1886.

[SEAL.] N. CALLAN,
Notary Public.

4 II.—*General demurrer.—Filed July* 17, 1886.

And now come the said defendants, by their Attorney-General, and demurring to the petition in this cause, state as the ground thereof that the petition does not allege facts sufficient to constitute a cause of action.

ROBERT A. HOWARD,
Assistant Attorney-General.

5 III.—*Order of the court sustaining the demurrer in part and overruling it in part.*

At a Court of Claims held at the city of Washington, D. C., on the 3rd day of May, A. D. 1886.

Ordered that the demurrer herein be sustained as to that part of the claim which occurred six years before the filing of the petition and overruled as to the rest of the claim without prejudice.

6 IV.—*Findings of fact and conclusion of law.—Filed May* 24, 1886.

The claimant, considering the facts hereinafter set forth to be proven, and deeming them material to the due presentation of this case in the findings of facts, requests the court to find the same as follows:

I.

That the claimant served in the Army of the United States as a cadet in the United States Military Academy from July 1, 1856, to May 6, 1861, and subsequently as a commissioned officer of the United States Army. (Adjutant-General's letter.)

II.

That he has served continuously in the Army of the United States since July 1, 1856, and that all such service should be counted in computing his longevity pay as an officer of the Army, and that his first five-year period should have been reckoned from July 1, 1861, instead of from May 6, 1886, and each subseqent period should have been advanced in like manner.

III.

That the claimant is entitled to the difference of pay upon counting such cadet service, or to the sum of twenty-six hundred and eleven dollars and *two* cents.

Transcripts
of
Records.
1888

674

Supreme Court U. States
130 U. S.
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IV.

That, under the decision of the court upon demurrer, the claim-
7 ant is entitled to count his cadet service in computing his longevity pay and to receive the difference of pay thereupon that would accrue and become due subsequent to February 24, 1880, the date upon which the statute of limitations begins to run in this case, until May 6th, 1881, and that the amount accruing and accrued in that period amounts to one hundred and twenty-six $\frac{22}{100}$ ($126.\frac{22}{100}$) dollars.

R. B. WARDEN,
Attorney for Claimant.

MAY 3, 1886.

The foregoing requests are granted and adopted by the court as their findings of fact upon which, as conclusion of law, the court find that the claimant recover the sum of $126.\frac{22}{100}$.

8 *Final judgment.*

At a Court of Claims held at the city of Washington, D. C., on the 24th day of May, A. D. 1886, judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the claimant, and do order, adjudge, and decree that the said Malbone F. Watson do have and recover of and from the United States the sum of one hundred and twenty-six $\frac{22}{100}$ dollars ($126.22).

9 VI.— *Application for and allowance of appeal.*

From the judgment rendered in the above-entitled cause on the 24th day of May, 1886, in favor of claimant, the defendants, by their Attorney-General, on the 17th day of July, 1886, make application for and give notice of an appeal to the Supreme Court of the United States.

ROBERT A. HOWARD,
Ass't Attorney-General.

Filed July 17, 1886.

AT CHAMBERS.

Allowed July 17, 1886.

WILLIAM A. RICHARDSON,
Chief Justice.

10 VII.

In the Court of Claims.

MALBONE F. WATSON
v.
THE UNITED STATES. } No. 14791.

I certify that the foregoing are true transcripts of the pleadings in the aforesaid cause of the order of the court on demurrer of the findings of fact and conclusion of law, of the final judgment of the court, of the appli-

cation of the defendants for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 20th day of September, A. D. 1886, at the city of Washington.

[SEAL.] JOHN RANDOLPH,
Asst. Cl'k, Ct. of Claims.

(Indorsement on cover:) No. 1033. The United States, appellant, vs. Malbone F. Watson. Court of Claims. Filed September 27, 1886.

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

THE UNITED STATES
vs.
MALIBONE F. WATSON. } No. 659.

APPEAL FROM THE COURT OF CLAIMS.

STATEMENT, ASSIGNMENT OF ERRORS, AND BRIEF OF ARGUMENT FOR APPELLANT.

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

THE UNITED STATES, APPELLANT,
vs.
MALIBONE F. WATSON. } No. 659.

APPEAL FROM THE COURT OF CLAIMS.

STATEMENT, ASSIGNMENT OF ERRORS, AND BRIEF OF ARGUMENT FOR APPELLANT.

STATEMENT.

This is an appeal from a judgment rendered by the Court of Claims against the United States in favor of Malibone F. Watson for the sum of $126.22.

The case was argued upon general demurrer in the court below.

The facts stated in the petition are therefore admitted in this appeal and are substantially as follows:

Claimant entered the United States Military Academy as a cadet July 1, 1856; was appointed as a second lieu-

tenant of cavalry May 6, 1861; first lieutenant of artillery May 14, 1861; captain March 9, 1866; *retired* from active service for loss of his right leg from wound received in line of duty September 18, 1868.

In computing longevity of service pay he claims to be entitled to count his time as a cadet under the acts of July 5, 1838 (5 Stat. L., 256); March 2, 1867 (14 Stat. L., sec. 9, 423); July 15, 1870 (Rev. Stat., 1262).

By so crediting the service claimant alleges there is due him up to the time of filing his petition the sum of $2,611.10 (Trans., 1).

The sections of the acts referred to as the foundation of the claim are as follows:

Section 15, act of July 5, 1838 (5 Stat. L., 258):

> Every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States: *Provided*, That in certain cases where officers are entitled to and receive double rations the additional one allowed in this section shall not be included in the number to be doubled.

Act of March 2, 1867, sec. 9 (14 Stat. L., 423):

> That section 15 of the act to increase the present military establishment of the United States, and for other purposes, approved July 5, 1838, be amended so that general officers shall not hereafter be excluded from receiving the additional ration for every five years' service; and it is hereby further provided that officers on the retired list of the Army shall have the same allowance of additional rations for every five years' service as officers in active service.

Act July 15, 1870 (Rev. Stat., 1262):

> There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, ten per centum of their current yearly pay for each term of five years' service.

It was urged on the part of the claimant that, under the above-quoted statutes, claimant was entitled to credit for the time he served as a cadet at West Point in the United States Military Academy. In support of this claim the decision of this court in the case of *The United States* vs. *Morton* (112 U. S. R. S.) was relied upon. The decision in that case is clearly stated in the "*syllabus*," viz:

> The time of service of a cadet at West Point from July 1, 1865, to June 15, 1869, is to be regarded as "actual time of service in the Army" within the meaning of the *Acts of February* 24, 1881, and *June* 30, 1882 (21 Stat. L., 346, and 22 Stat. L., 118), in computing his increase of pay for each term of five years "of service," under section 1262 of the Revised Statutes.

It is held "that the time during which the plaintiff (Morton) was serving as a cadet was time of service by him in the Army."

The clause of the *Appropriation Act* of 1881 (*supra*) considered by this court in the *Morton Case* (*supra*) is as follows:

> Additional pay to officers for length of service, to be paid with their current monthly pay, and the actual time of service in the Army or Navy, or both, shall be allowed all officers in computing their pay.

The clause in the *Appropriation Act of* 1882 (*supra*) is as follows:

> *Provided*, That from and after July 1, 1882, the 10 per centum increase for length of service allowed to certain officers by section 1262 of the Revised Statutes shall be computed on the yearly pay of the grade fixed by sections 1261 and 1274 of the Revised Statutes; pay to enlisted men for length of service, payable with their current monthly pay; *retired* officers: for the payment of any such officers as may be in service, either upon the active or retired list, during the year ending June 30, 1883, in excess of the numbers for each class provided for in this act.

It was contended in behalf of the Government that claimant, as a retired officer at the time of the passage of the acts of 1881 and 1882, does not come within the provisions of the same, and that therefore the decision of this court in Morton's Case does not apply.

That the several acts upon which claimant relies refer to services of officers in active service. And further, under any circumstances, there is no obligation imposed on the Government by the acts relied on to warrant the claim that cadet service should be counted in computing increase of pay prior to the passage of the act of 1881.

The court below found as a conclusion of law that the claimant is entitled to count his cadet service in computing his longevity pay, and to receive the difference of pay thereupon that would accrue and become due subsequent to February 24, 1880, the date upon which the statute of limitations begins to run in this case, until May 6, 1881, and that the amount accruing and accrued in that period amounts to $126.22.

ASSIGNMENT OF ERROR.

The court erred in ordering, adjudging, and decreeing "that the said Malibone F. Watson do have and recover of and from the United States the sum of one hundred and twenty-six $\frac{22}{100}$ dollars ($126.22).

ARGUMENT.

It is not claimed in the petition that claimant is entitled to increase of pay under the provisions of the act of February 24, 1881 (21 Stat. L., 346).

His claim is that he is entitled to credit for his service as a cadet at the United States Naval Academy in computing longevity pay under certain acts of Congress, to wit: Act of July 5, 1838 (*supra*); March 2, 1867 (*supra*); July 15, 1870 (*supra*); and *Morton's Case* (*supra*).

In Morton's Case it was decided substantially by this court that cadet service at West Point is such service in the Army as should be credited in computations made under the provisions of the acts of 1881 and 1882 (*supra*).

It is urged by claimant that section 15 of act of July 5, 1838, applies to officers in active service who "shall be entitled to receive one extra ration per diem for every five years' service he may have served in the Army of the United States."

The benefits of this act are extended to retired officers as follows:

> And it is hereby further provided: That officers on the retired list of the Army shall have the same allowance of additional rations for every five years' service *as officers in active service.*

It does not follow, because service as a cadet is service in the Army, that it is the service referred to in the above-cited act. The service of a cadet is the service of preparation for active service. The cadet is in the service. So is the retired officer. For the same reason neither service can be computed under said acts of 1838 and 1867; to wit, neither is in active service.

The same limitation, the obvious and plain meaning, of the act of 1870 (Rev. Stat., 1262):

"Commissioned officers" shall be allowed and paid "10 per centum of their current yearly pay for each term of five years' service;" that is to say, for each term of five years' service as a commissioned officer.

This it is also claimed is the obvious and plain meaning of section 1262. It is the construction always placed upon it by the accounting officers of the Treasury.

If this court should regard the meaning of the statute doubtful and ambiguous, then, as held in numerous decisions of this court and the Court of Claims, the opinion of such officers should be regarded with great consideration.

The claimant could with equal force insist that service as enlisted men, service in the volunteer army or navy, or both, or any irregular military service of any kind or any connection with and as part of the military service, should come within the provisions of said section 1262.

It is submitted that said section 1262 applies solely to commissioned officers of the regular Army and their service as such commissioned officers. It is immaterial as to whether cadet service is service in the regular Army or

not; it is neither active service nor the service of commissioned officers.

The judgment of the court below should be reversed.

Respectfully,

R. A. HOWARD,
Assistant Attorney-General.
F. P. DEWEES,
Assistant Attorney.

O

The Supreme Court of the United States.

OCTOBER TERM, 1888.

THE UNITED STATES, APPELLANTS,
v.
MALBONE F. WATSON, APPELLEE.
No. 369.

Appellee's Brief.

STATEMENT.

The appellee petitioned the Court of Claims on the grounds hereinafter set forth for certain longevity pay and credit of service.

The Court of Claims decided in favor of the appellants' suit, and the United States have appealed to this Court from the judgment of the Court of Claims.

The appellee is an officer of the United States Army, and is now a Captain on the retired list, with the brevet rank of Major. He was appointed a cadet at the United States Military Academy on July 1, 1856, and served there until he was appointed a Second Lieutenant of Cavalry, on May 6, 1861. He served continuously on the active list in different grades until he was retired with the rank of Captain, on September 18, 1868, by reason of the loss of his right leg, consequent upon wounds received in the

line of duty. The brevet rank of Captain was bestowed, on June 27, 1862, for gallant and meritorious services in the battle of Gaines' Mill, Va., and the brevet rank of Major was bestowed on July 2, 1863, for gallant and meritorious services in the battle of Gettysburg, Pennsylvania.

Brief.

He claims to be entitled to count his service as a cadet at the Academy in computing his longevity pay, under certain acts of Congress, and the decision of the United States Supreme Court in the case of *The United States* v. *Charles Morton* (U. S. R. 1, 112).

The defendants have refused to credit such service in computing longevity pay, except in cases where the increase pay could be credited under the provisions of the act of February 24, 1881. (21 Stat., 346.)

The claim of Major Watson appears to us to be entirely good and reasonable, in point of fact and law.

The Court of Claims, in deciding the case of *Lawrence S. Babbitt* (16 C. Cl., 202), held that, under the act of June 18, 1878 (Supplement of the R. S., p. 362, § 7, ch. 263), service as a cadet could not be counted in computing longevity pay. In this decision we see nothing to criticize other than favorably. The act of June 18, 1878, appears to us to be utterly foreign to the claim which was made in the *Babbitt* case. It certainly does not include cadets at West Point. It does not bear, it seems to us, even remotely on cadet service, it being a particular enabling act for other specific purposes.

The laws under which we make this claim, and which we contend are absolutely analogous in effect and operation to the act February 24, 1881, are as follows:

Section 15, act of July 5, 1838 (5 Stat., 258), "That

every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive *one extra ration per diem for every five years' service he may have served, or shall serve, in the Army of the United States: Provided*, That in certain cases where officers are entitled to receive double rations, the additional one allowed in this section shall not be included in the number to be doubled."

This law was not changed until the passage of the act of March 2, 1867, which is as follows:

"*And be it enacted*, That section fifteen of the act to increase the present military establishment of the United States, and for other purposes, approved July 5, 1838, be amended so that general officers shall not hereafter be excluded from receiving the additional ration *for every five years' service;* and it is hereby further provided that officers on the retired list of the Army shall have the same allowances of additional rations *for every five years' service* as officers in active service."

The effect of this act was to simply increase the number of beneficiaries under the act of July 5, 1838, and so the law remained until July 15, 1870, when the law which afterwards became the following section of the Revised Statutes was enacted:

Revised Statutes, section 1262:

"There shall be allowed and paid to each commissioned officer below the rank of Brigadier-General, including Chaplains and others having assimilated rank or pay, ten per centum of their current yearly pay *for each term of five years' service.*"

This act simply again excluded general officers from the benefits of service pay and changed the *rate* of pay "for every five years' service," but did not alter either the *character or the length of the service* for which the pay was provided under the former acts.

And this was followed in 1881 by the act of February 24 of that year (12 Stat., 346), which provided for—

"Additional pay to officers for length of service, to be paid with their current monthly pay, and the actual time of service in the Army or Navy, or both, shall be allowed all officers in computing their pay."

We claim that the provisions of the act of July 5, 1838 (Sec. 15), providing rations for *service in the Army*, have simply been continued in force by the succeeding acts, and that all those acts are precisely similar in their provisions regarding the counting of service in the Army in computing service or longevity pay. All are alike in this respect. The provisions of one are parallel with the provisions of the others, so far as the counting of service is concerned. *All service* in the regular Army is comprehended in the provisions of these different laws.

It is not necessary to discuss here whether or not a cadet is in the *service*. That question has been affirmatively decided by the Supreme Court in the *Morton* case. There the Supreme Court held that service as a cadet is service in the Army of the United States, so far as the question of longevity pay is concerned; and we maintain that this decision is additional authority for the position, which we claim to be in accordance with law, that cadet service should be counted in computing such increase pay prior, as well as subsequent, to the passage of the act of February 24, 1881.

The Supreme Court, in the case of *Morton*, used the following words:

"From this review of the statutes it cannot be doubted that, before the passage of the act of July 28, 1866, as well as afterwards, the corps of cadets at the Military Academy was a part of the Army of the United States, and a person serving as a cadet was serving in the Army."

The act of July 5, 1838, section 15 (5 Stat., 258), provides:

"That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years' *service* he may have served, or shall *serve*, in the Army of the United States." * * *

Who can think that an officer who served in the Army of the United States as a cadet is not entitled to count such cadet service under this just quoted law, and the decision of the United States Supreme Court in the *Morton* case?

The act of March 2, 1867, and section 1262, R. S., simply continue in force the rule laid down in the act of July 5, 1838, and each of them bears a similar relation to this case. All three enactments, in direct, unqualified terms, cover *all service* in the regular Army of the United States. There seems to us not the slightest reason for holding the position assumed by the accounting officers, that these laws apply simply to commissioned service, a position which seems to us to be directly in the teeth of the laws. The pay is provided for *commissioned officers*, but *not alone for commissioned service.* The old construction is the result of the much older propensity the accounting officers have so strikingly evinced to disallow demands on the Government.

The words, "*for every five years he may have served, or shall serve, in the Army of the United States,*" as used in the act of July 5, 1838, are certainly as specific and comprehensive in operation as are the words, "*actual time of service in the Army,*" as used in the act of February 24, 1881, and the unqualified word, "*service,*" as used in the act of March 2, 1867, and in section 1262, Revised Statutes,

is no less effective than are the more specific provisions of the acts of July 5, 1838, and February 24, 1881.

That any particular service is meant by section 1262, and the act of March 2, 1867, is nowhere to be found. On the other hand, a more general provision could not be framed than that embodied in section 1262 itself. If a question like that raised on section 1262 can be properly maintained, then it must follow that the same question invades the provisions of the acts of February 24, 1881, under which the cadet service has been counted, and the provisions of the act of July 5, 1838. The "actual time" of which "service" in the Army "shall be counted" can be asked as readily, and with as much color of reason, of this act, as can a similar question be asked as to the earlier laws. Does the act of February 24, 1881, mean *actual commissioned service*, or simply *service* generally, as provided in section 1262, R. S.? It has been decided that it means service generally, and if it does mean service generally, then certainly section 15 of the act of July 5, 1838, means precisely the same, as also do the acts of March 2, 1867, and July 15, 1870 (Revised Statutes, section 1262). If an officer is entitled to count his cadet service under one of these laws, he is entitled, by all principles of law, to the same credit under each of the others.

It is not at all clear to us that an officer is not entitled to count his *enlisted* service in the regular army under the operation of these acts. The passage of the act of June 18, 1878 (20 Stat., 150), by which such enlisted service was specially allowed, would have no effect on the obligation created by the earlier acts. Were it otherwise the act would be retroactive, and impair the obligation of contracts. We maintain that section 1262, R. S., and the acts of July 15, 1838, and March 2, 1867, apply as well to cadet service as they do to commissioned service, and that

they in terms express one as much as the other, and that there is nothing in the nature of the service or the laws to exclude either service in computing pay.

What ground there was originally for the narrow construction given by the accounting officers, which rendered the strong and comprehensive phrase "for every five years' service," as used in the acts of March 2, 1867, and July 15, 1870, so impotent and senseless, it is hard to conjecture; and why they have recently refused to credit longevity or service pay for cadet service under those acts and the act of July 5, 1838, since the Supreme Court has decided cadet service to be service in the Army, it is even more difficult to comprehend. Certainly there is nothing in the nature of those laws themselves to warrant so remarkable a construction. It cannot be believed that the framers of the act of March 2, 1867, and the act of July 15, 1870, intended to change the law in regard to the character of service to be counted; for it is absurd to suppose that, had such been their intention, they would have utterly failed to mention the kind of service to which they intended the act to apply, instead of leaving the statute in terms as broad, and even more general than before. The change is only one of language; the effect is the same.

The act of July 5, 1838, is identical, in language, with the act of February 24, 1881, so far as the specific provision, "service in the army," is concerned.

In the case of *Thornley* v. *The United States* (113 U. S. Reports, p. 310), it is held that "where the meaning of a statute is plain it is the duty of the courts to enforce it according to its *obvious terms*. In such a case there is no necessity for construction." Applying this rule to the case at bar, we claim that the defendants have no ground of defence. In terms, the statutes in question include *all service in the Army*, and to hold otherwise would require a

strained construction sharply conflicting with the rule just cited in the *Thornley* case. It would require the interpolation of words not contained in the laws to justify the construction given them by the defendants. It would also be plainly at variance with the clearly apparent spirit of the decision of the Supreme Court and of this Court in the *Morton case* to deny the claims of Major Watson in this case.

We feel constrained to urge upon the attention of the Court the importance of this suit as a class case affecting a large number of old and meritorious soldiers, among them being the most distinguished Generals of the century, all of whom have spent the energy of their lives in the service of their country, and some of whom, like Generals Grant, McClellan, and Hancock, are now dead.

Looking at the question as a matter of naked right and justice, one cannot perceive why the younger and less experienced class of officers should receive credit for the identical kind of service the counting of which is denied to the older officers, all of whom have passed the ordeal of many battles, and many of whom have fought through three wars.

R. B. WARDEN,
W. W. WARDEN,
for Appellee.